

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUAN RAMON MARTINEZ,

Plaintiff,

14 Civ. 7634

-against-

OPINION

ELSIE SANTAMARIA, et al.,

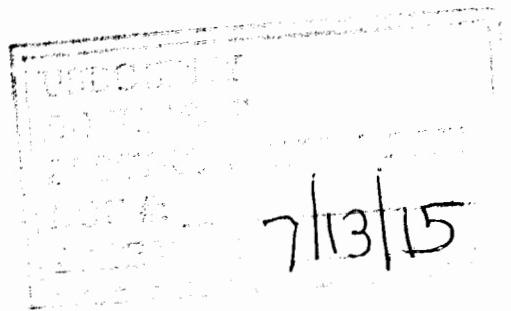
Defendants.

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A P P E A R A N C E S:

Pro Se

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New York, NY 10002



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By: Mark E. Klein, Esq.

Sweet, D.J.

Defendant New York State Education Department ("SED"), (s/h/a Adult Career and Continuing Education Services - Vocational Rehabilitation ("ACCES-VR") and Bureau of Proprietary School Supervision ("BPSS")) and individual defendants Isabel Gonzalez, Ann Huff, Patricia Manzariello (s/h/a Patricia Manzzariello), Edward G. Kramer, Armando Pabon, Jr., and John B. King, Jr. (collectively, the "Individual State Defendants" and, along with SED, the "State Defendants") have moved pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the Complaint of *pro se* plaintiff Juan Ramon Martinez ("Martinez" or the "Plaintiff"). Also pending is Plaintiff's motion for a default judgment against defendants Elsie Santamaria ("Santamaria"), D. Pinto ("Pinto") and Ferrari Driving School Inc. ("Ferrari") (collectively, the "Ferrari Defendants"). Based upon the conclusions set forth below, both motions are granted, the complaint against the State Defendants is dismissed, and default judgment for costs will be entered against the Ferrari Defendants.

Prior Proceedings

The Plaintiff filed his regrettably incoherent Complaint on September 15, 2014 seeking damages of \$100 million arising out of a series of events starting in 2010.

The Plaintiff, an alleged former "consumer" of ACCES-VR, appears to assert (i) alleged violation of his civil rights, pursuant to 42 U.S.C. §§ 1981, 1983, 1985 and 1986 (see plaintiff's Compl., at 6), (ii) alleged violation of his purported entitlement to vocational rehabilitation and educational services pursuant to 29 U.S.C. § 720(a)(3)(A), the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (the "ADA"), and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (the "IDEA") (Compl. at 7-9), and (iii) alleged violation of various other statutes, regulations, policies, and procedures. (Compl. at 20-28.)

The Complaint alleges the following with respect to the State Defendants:

(i) Defendant ACCES-VR was “[r]esponsible for processing Plaintiff [sic] Application, that constituted an inconvenience and a delay that created this Complaint-Claim” (Compl. at 4);

(ii) Defendants Gonzalez and Huff are “[r]esponsible for the inconvenience and the delay, that constituted this Complaint-Claim and closing plaintiff [sic] ACCES-VR case” (id.);

(iii) Defendant Linton is “[r]esponsible for the inconvenience and the delay that constituted this Complaint-Claim and closing plaintiff [sic] ACCES-VR case, and refusing to process an [sic] due Process request in the form of an Impartial Hearing request form advised [sic] Plaintiff to call” defendant Manzariello (id.);

(iv) Defendant Manzariello “[d]enied Plaintiff a Due process Hearing request in numerous time [sic], advice [sic] Plaintiff to reapply for ACCES-VR services, disregarding Plaintiff accomplishments at Star Career Academy” (id.);

(v) Defendant BPSS and defendants Pabon and Kramer are “[r]esponsible for not doing an Comprehensive Investigation of Plaintiff complaint, knowing there are two school [sic] that ACCES-VR did not pay tuition, with the same consume[r]”; and that BPSS is “[r]esponsible for not taking Plaintiff Notice of Claim and Complaint” and “for the pain and suffering plaintiff went through” (id. at 5);

(vi) Defendant King, the former Commissioner of SED, is “[r]esponsible for adding to Plaintiff Mental Anguish and distress,” for “not answering Plaintiff complaint on time,” and for “not investigating Plaintiff complaint [sic]” (id.); and

(vii) Defendants Pabon and Kramer “fail[ed] to investigate” plaintiff’s complaint but instead “forwarded Complainant complaint to same agency Complainant was complaining about” (id. at 15).

These allegations will be taken as true for the purpose of deciding the motion to dismiss only. Notably, the Complaint does not allege that the actions affecting the Plaintiff were taken because of his race or ethnicity. The

Plaintiff has not identified his purported disability or alleged that the actions of which he complains were because of his membership in any protected class.

Some of the Exhibits referred to in the Complaint provide further information concerning the nature of the claims against the State Defendants. In his Complaint (no. 1300041), submitted on April 23, 2013 (the "April 2013 Complaint") to SED, Plaintiff stated that he was "dropped" from the Ferrari Driving School program "because of heavy medication and did not have the ACCES-VR check for transportation." He further stated that, after Ms. Gonzales of ACCES-VR approved plaintiff's enrollment in "Culinary School," he "went to STAR Career Academy for six months, gave the School 180 hours of externship, was remove[d] from my externship because I am on Parole and my Parole office[r] don't want me in establishments where there is alcohol" (See Klein Decl., Exh. C.) Plaintiff then asserts:

After all this, Ferrari Driving School Have [sic] not got paid, STAR Career haven't got pay [sic] and my transportation of 9 months I haven't receive [sic], how can you expect me to accomplish anything when you have everything against me. Someone is misplacing a lot of money, please investigate.

(Id.)

Plaintiff states in paragraph 52 of his Complaint that he filed his April 2013 Complaint with the SED "Investigation Unit" at 116 West 32nd Street in New York City, and that, on April 23, 2013, Edward Kramer ("Kramer"), a Supervising Investigator at the BPSS office located at 116 West 32nd Street, informed Plaintiff that his April 2013 Complaint was not within BPSS's jurisdiction.

As stated in Kramer's April 23, 2013 letter to Plaintiff (which appears to be "Exhibit 3" referred to in paragraph 30 of Plaintiff's Complaint), Kramer informed Plaintiff that he had "reviewed your complaint against ACCES-VR for non-payment of your benefits[,]" had "determined that the issues raised in this matter are not within the jurisdiction of" BPSS, and therefore had referred Plaintiff's Complaint to ACCES-VR, Special Education Quality Assurance, in Albany. (See Klein Decl., Dkt. No. 32, Ex. D.) Kramer's April 23rd letter concluded: "Be advised that the above unit should be contacting you shortly." (Id.)

The instant motions were marked fully submitted on April 8, 2015.

The Complaint Fails to Comply with Rule 8

Rule 8 of the Federal Rules of Civil Procedure requires that, in order to state a claim, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009); Salahuddin v. Cuomo, 861 F.2d 40, 41-42 (2d Cir. 1988); see Iwachiw v. N.Y. State Dept. of Motor Vehicles, 396 F.3d 525, 527 (2d Cir. 2005) (per curiam). It should be plain in order to "give the adverse party fair notice of the claim[s] asserted so as to enable him to answer and prepare for trial." Salahuddin, 861 F.2d at 42. It should be because an unnecessarily long pleading places "an unjustified burden on the court and on the parties who must respond to the complaint because they are forced to select the relevant material from a mass of verbiage." Jones v. Nat'l Comm'ns. & Surveillance Networks, 409 F. Supp. 2d 456, 464 (S.D.N.Y. 2006) (internal quotations and alterations omitted), aff'd, 266 Fed. Appx. 31

(2d Cir. 2008). The required short and plain statements are absent from Martinez' winding and incoherent pleading.

A complaint also fails to meet the standards of Rule 8 when it is "so baldly conclusory that it fails to give notice of the basic events and circumstances of which the plaintiff complains." Shuster v. Oppelman, 962 F. Supp. 394, 395 (S.D.N.Y. 1997). Wholly conclusory claims and those which rely upon unreasonable inferences and unwarranted deductions do not suffice to establish a proper pleading. See Furlong v. Long Island Coll. Hosp., 710 F.2d 922, 927 (2d Cir. 1983) (federal pleading requirements "do[] not permit conclusory statements to substitute for minimally sufficient factual allegations."); Ciambriello v. County of Nassau, 292 F.3d 307, 325 (2d Cir. 2002) (conclusory allegations of conspiracy are insufficient to state a civil rights claim).

"While *pro se* complaints are generally construed more liberally than complaints prepared by counsel, they are still subject to the requirements of [Fed. R. Civ. P.] Rule 8 and therefore must be dismissed if, even upon generous review, they fail to comply with those requirements." Goff v. U.S. Treasury

Dep't, No. 98 Civ. 3784, 2001 WL 1103273, at *1 (S.D.N.Y. Aug. 1, 2001) citing Shuster, 962 F. Supp. at 396. Although dismissal for pleading violations is disfavored, defendants must be able to ascertain the nature and basis of the claims against them so that they can prepare a defense, and "unintelligible, speculative complaints that are argumentative, disjointed and needlessly ramble have routinely been dismissed in this Circuit." Ceparano v. Suffolk County, No. 10-CV-2030, 2010 WL 5437212, at *3 (E.D.N.Y. Dec. 15, 2010), aff'd, 404 Fed. Appx. 537 (2d Cir. 2011); see also Shetiwy v. Midland Credit Mgmt., 980 F. Supp. 2d 461, 467 (S.D.N.Y. 2013).

Here, the Plaintiff makes no effort to link the catalogue of federal statutes, regulations and "policies and procedures" to the factual allegations he asserts. The assertion of a multitude of claims against a panoply of defendants leaves the reader struggling to ascertain which claims are being asserted against each defendant under which statute, and the claims are not logically connected to any factual assertions.

The Complaint violates Fed. R. Civ. P. 8 and, on this ground will be dismissed.

Sovereign Immunity Bars Certain of Plaintiff's Claims

The Eleventh Amendment to the United States Constitution bars suit in federal court for relief against a State by a private citizen absent the State's consent or an express statutory waiver of immunity. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 66 (1989); see Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). This immunity extends to state agencies, and also bars actions for damages against state officials in their official capacities where the state is the real party in interest. Will, 491 U.S. at 71; Kentucky v. Graham, 473 U.S. 159, 165-66 (1985); see Posr v. Court Officer Shield No. 207, 180 F.3d 409, 414 (2d Cir. 1999).

As an arm of the State, SED, as well as its departments -- named defendants ACCES-VR and BPSS -- are entitled to Eleventh Amendment immunity. See Hayes v. Williamsville Cent. Sch. Distr., 506 F. Supp. 2d 165, 169-70 (W.D.N.Y. 2007) (dismissing ADA and § 1983 claims against SED because "Eleventh Amendment immunity from suit extends to the

defendant Education Department."); see also Will, 491 U.S. at 71 (1989) (State and its officials are not parties for the purposes of § 1983).

The Plaintiff's claims - to the extent they can be discerned -- against ACCES-VR, BPSS, and, to the extent they are sued in their official capacities, the Individual State Defendants are therefore barred because these defendants are entitled to Eleventh Amendment immunity from suit.

The Complaint Fails to State a Plausible Claim for Relief

"To survive a motion to dismiss [under Fed. R. Civ. P. 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. A complaint that merely alleges facts that are "consistent with" or "compatible with" liability fails to state

a cognizable claim. See Twombly, 550 U.S. at 557. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 566 U.S. at 679. Courts are not required to accept as true "legal conclusions" or "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." Harris v. Mills, 572 F.3d 66, 72 (2d Cir. 2009).

As discussed further below, Martinez' various claims and assertions fail to meet this standard.

Discrimination Has Not Been Adequately Alleged

By citing to the ADA and the IDEA in his Complaint, the Plaintiff appears to be asserting a claim that he suffered various injuries as a supposed result of discrimination by reason of his disability. (See, e.g., statutes to which the Plaintiff cites on pages 22-23 of his Complaint.) In order to state such a claim for discrimination, however, a plaintiff must demonstrate that any denial of benefits occurs "by reason of . . . disability, which essentially means that the plaintiff

must prove that the denial is 'because of' the disability." Henrietta D. v. Bloomberg, 331 F.3d 261, 278 (2d Cir. 2003) (citation omitted). The "sine qua non" of any discrimination claim "is that the discrimination must be because of" a protected characteristic. See Patane v. Clark, 508 F.3d 106, 112 (2d Cir. 2007) (per curiam). The Plaintiff has made no factual assertions that would allow a plausible inference that the State Defendants' actions were even remotely motivated by reason of plaintiff's disability, or of any other kind of discrimination.

Although the Plaintiff cites in his Complaint to the ADA and the IDEA, he fails to provide a single non-conclusory or non-speculative factual allegation from which it can be inferred that any adverse action taken against him was motivated by anti-disability discriminatory animus. Because his allegations do not plausibly allege that the State Defendants denied him access to some service or program as a result of such animus, the Plaintiff fails to state any claim of discrimination.

Violation of 42 U.S.C. § 1981 Is Not Adequately Alleged

The Plaintiff's § 1981 claim fails because that statute only prohibits race-based discrimination, and his complaint does not allege that any defendant took action against him for racial reasons. See Duncan v. AT&T Comm'ns., Inc., 668 F. Supp. 232, 235 (S.D.N.Y. 1987) (citing Runyon v. McCrary, 427 U.S. 160, 167 (1976)). Although the Plaintiff here makes references in his Complaint to several statutes relating to persons with disabilities, these "repeated references to a partial disability or handicap are of no help to [him], since § 1981 prohibits discrimination that based at least in part on racial classifications." Duncan, 668 F. Supp. at 235 (citation omitted). The § 1981 claims are therefore dismissed.

In addition, § 1981 provides for causes of action only against individuals who were personally involved in discriminatory action. See Whidbee v. Garzarelli Food Specialties, Inc., 223 F.3d 62, 74-75 (2d Cir. 2000). Where an individual defendant has acted on behalf of the state, § 1983 provides the "exclusive federal damages remedy." Whaley v. City U. of New York, 555 F. Supp. 2d 381, 400-01 (S.D.N.Y. 2008). "State employment has generally been deemed sufficient to render the defendant a 'state actor.'" Id. at 401; Roddini v. City

Univ. of New York, No. 02 Civ. 4640, 2003 WL 435981, at *5
(S.D.N.Y. Feb. 21, 2003).

The Individual State Defendants were, at all relevant times, employees of SED, and therefore "state actors." Thus, "to the extent [Plaintiff] seeks to vindicate any independent rights under 42 U.S.C. § 1981, he must do so via claims under § 1983." See Whaley, 555 F. Supp. 2d at 400. Plaintiff's claims under § 1981 are dismissed for this additional reason.

Violation of § 1983 is Inadequately Alleged

The Plaintiff's § 1983 claim fails because such a claim must be asserted against a "person." Neither state agencies, nor state officials acting in their official capacities, are "persons" for the purposes of that statute. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989); Spencer v. Doe, 139 F.3d at 111. Therefore, in addition to being barred by the Eleventh Amendment, the Plaintiff cannot assert a § 1983 claim against SED, its departments and the Individual State Defendants in their official capacities because they are not "persons" within the statute's meaning.

The Plaintiff has not set forth sufficient allegations to state claims against the Individual State Defendants in their individual capacities. The claims against the Individual State Defendants fail because he has not sufficiently alleged the personal involvement of any named defendant in the violation of plaintiff's federal rights. See Provost v. City of Newburgh, 262 F.3d 146, 154 (2d Cir. 2001); Rosa R. v. Connelly, 889 F.2d 435, 437 (2d Cir. 1989). The Plaintiff has also failed to establish a tangible connection between the acts of any individual defendant and his alleged injuries. Cf. Bass v. Jackson, 790 F.2d 260, 263 (2d Cir. 1986) (dismissing § 1983 claim for inadequate medical care where *pro se* plaintiff did not "connect the failure to obtain prompt medical care to any of the . . . defendants"). The Plaintiff has failed to set forth allegations that any Individual State Defendant has deprived him of any constitutional right or caused him specific injury.

The Plaintiff also claims that he was denied due process. The Due Process Clause of the Fourteenth Amendment requires an "opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (internal quotations and citations omitted). The

Plaintiff has not adequately alleged that he was denied a liberty or property interest without due process of law.

The Plaintiff's equal protection claims are conclusory and thereby insufficient. See Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir. 1987) ("a [§ 1983] complaint must contain specific allegations of fact which indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple, and conclusory statements are insufficient"); Cohen v. Litt, 906 F. Supp. 957, 961 (S.D.N.Y. 1995) ("a court need not accept a complaint's legal conclusions and unwarranted factual deductions").

The Plaintiff has failed to offer facts sufficient to show that he was intentionally treated differently than similarly-situated comparators based upon some protected characteristic. See Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Smith v. City of Albany, No. 1:03-CV-1157, 2006 WL 839525, at *16 (N.D.N.Y. Mar. 27, 2006), aff'd, 250 Fed. App'x 417 (2d Cir. 2007). The Plaintiff has not identified any similarly-situated comparators who received preferential treatment or pointed to any other facts that indicate he was

treated differently from others. This is fatal to his equal protection claims. See Bishop v. Best Buy Co., No. 08 Civ. 8427, 2010 CL 4159566, at *11 (S.D.N.Y. Oct. 13, 2010) ("To maintain an equal protection claim, Plaintiff must show adverse treatment of individuals compared with other similarly situated individuals and that such selective treatment was based on impermissible considerations"), aff'd, 518 Fed. Appx. 55 (2d Cir. 2013); Mosdos Chofetz Chaim, Inc. v. Village of Wesley Hills, 815 F. Supp. 2d 679, 697-98 (S.D.N.Y. 2011).

Violation of 42 U.S.C. § 1985 Is Not Adequately Alleged

The Complaint similarly fails to state a conspiracy claim pursuant to § 1985. To assert such a claim, a plaintiff must allege that defendants have, with racial or other class-based discriminatory animus, conspired to deprive the plaintiff of a constitutional or other federal right. LeBlanc-Sternberg v. Fletcher, 67 F.3d 412, 426-27 (2d Cir. 1995); see Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087-88 (2d Cir. 1993) (per curiam). To defeat a motion to dismiss, plaintiff must state claims of conspiracy with more than

conclusory allegations. Harris v. County of Nassau, 581 F. Supp. 2d 351, 358 (E.D.N.Y. 2008).

The Plaintiff has pled only a conclusory allegation that he was the subject of an unspecified “[c]onspiracy to interfere with civil rights,” and that the State Court Defendants have discriminated against him. (See Compl. at 6.) The Plaintiff has failed to sufficiently plead the requisite intent to discriminate. Ford v. Moore, 237 F.3d 156, 162, n.3 (2d Cir. 2001) (plaintiff's § 1985(3) conspiracy claim failed “for lack of any evidence of the requisite discriminatory intent”). Further, conspiracy claims under § 1985 must contain specific factual allegations showing an agreement or a meeting of the minds to achieve an unlawful end. Webb v. Goord, 340 F.3d 105, 110 (2d Cir. 2003) (citation omitted). Here, the Plaintiff has failed to allege any agreement among any of the State Defendants to deprive him of equal protection of the law, or that they conspired to harm him because of his unidentified disability.

The Violation of 42 U.S.C. § 1986 Is Inadequately Alleged

Martinez' failure to state a claim under 42 U.S.C. § 1985 requires this Court to dismiss any claim under § 1986. A claim under § 1986 establishes a cause of action against those that "neglect to prevent" conspiracies in violation of § 1985. Thus, where, as here, a party fails to state a claim pursuant to § 1985, the §1986 claim also must be dismissed. See *Malsh v. Garcia*, 971 F. Supp. 133, 139 (S.D.N.Y. 1997).

Moreover, the Complaint does not provide any information that would indicate that the Individual State Defendants had any knowledge of the alleged conspiracy. "Knowledge of the acts is a prerequisite to suit under 42 U.S.C. § 1986." Buck v. Board of Elections, 536 F.2d 522, 524 (2d Cir. 1976).

No Opposition to the Motion for Default Judgment Has Been Submitted

The docket indicates service was effected on Defendants Santamaria and Pinto, who are alleged to be Ferrari Driving School, Inc.'s Program Manager and President, respectively. (Dkt. Nos. 23, 24) The Clerk's certificate of default was filed for each. (Dkt. Nos. 35, 36). No opposition

to the instant motion has been filed, and a default judgment will therefore be entered against the Ferrari Defendants.

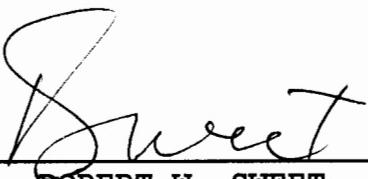
However, the Complaint fails to allege any monetary damages attributable to the defaulting defendants. The default judgment is therefore limited to costs.

Conclusion

Based on the conclusions set forth above, the motion of the State Defendants is granted, and the Complaint is dismissed without prejudice with leave granted to replead within twenty days. The motion of the Plaintiff for default judgment is granted and judgment for costs will be entered on notice.

It is so ordered.

New York, NY
July 8, 2015



ROBERT W. SWEET
U.S.D.J.